

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 866 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ISMAIL ABDULREHMAN AMROLIWALA

Versus

RUKAIYABI BAKARBHAI

Appearance:

MS VASUBEN P SHAH for Petitioner

MR UDAYAN P. VYAS FOR MR BHARAT J SHELAT for Respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 14/03/97

ORAL JUDGEMENT

In this revision, the petitioner-original defendant-tenant has questioned the legality and validity of the judgment and decree of eviction recorded by the District court in Regular Civil Appeal No. 236 of 1978 whereby, while allowing the appeal, the District court

quashed and set aside the judgment and decree of the trial court passed on 30.11.1978 by the Small Cause Court at Surat in Small cause suit No. 1532 of 1975 ,and granted decree for eviction and possession on the ground of non-payment of rent under Section 12 (3)(b) of the Bombay Rents,Hotel and Lodging House Rates Control Act,1947 (' the Bombay Rent Act').

The opponent is the original plaintiff-landlord who instituted the above suit for eviction against the petitioner -tenant inter alia contending that the tenant is liable for eviction on the ground of non-payment of rent. The tenanted premises consist of one room admeasuring 12x14' which was rented to the tenant by the landlord for residential purpose on monthly rent of Rs. 75/-. The landlord served the tenant with a notice under Section 12 (2) of the Bombay Rent Act, a copy whereof is produced at Exh.36, demanding arrears of rent for 11 months from 1.9.1972 to 31.7.1973. Reply to the notice Exh/48 was given by the tenant inter alia raising dispute of standard rent.

The trial court upon pleadings of the parties raised several issues at Exh. 18. However, only one issue is put in focus in this revision pertaining to the decree for eviction on the ground of non-payment of rent. Therefore, the court is required to examine as to whether decree for possession on the ground of non-payment of rent refused by the trial court and granted by the appellate court is legal and valid or not.

The trial court took the view that since the dispute was raised within a period of one month after service of notice under Section 12(2), the case was covered by the provisions of Section 12 (3)(b). The dispute of standard rent was resolved alongwith the judgment and therefore, the trial court granted time to enable the tenant to pay up arrears of rent as per the standard rent which came to be fixed at Rs. 75/- per month which happened to be contractual rate of rent. The tenant availed the opportunity and paid the arrears as directed by the trial court. Therefore, decree for possession was refused. Upon appeal before the District court, the judgment and decree of the trial court came to be reversed and the appellate court granted decree for possession on the ground of non-payment of rent against the tenant and in favour of the landlord. Hence,this revision at the instance of unsuccessful tenant under Section 29(2) of the Bombay Rent Act.

The appellate court has granted decree for possession on

the ground of non-payment of rent defaulted by the tenant during the course of appeal. The appellate court has dealt with this issue in paras 10 and 11 of the impugned judgment. Placing reliance on the decisions of the Supreme court and considering the three defaults during the period of appeal for non-payment of rent by the tenant, the appellate court found that the tenant is not ready and willing to pay rent and, therefore, he is not entitled to protection of Bombay Rent Act. Consequently, the decree followed. The contention raised by the learned advocate Miss Shah on behalf of the petitioner -defendant-tenant is that though there were three defaults during the period of appeal, on some occasions, advance rent was also paid and, therefore, tenant must be held to be ready and willing to pay rent and he should be given protection of Bombay Rent Act. This submission is seriously countenanced by Mr. Vyas while appearing for Mr. B.J. Shelat for the opponent-original plaintiff-landlord.

After having examined the rival contentions in light of the evidence on record and the observations made by the appellate court in the impugned judgment, the contention raised by Miss Shah for the petitioner is found to be unsustainable. There is no dispute about the fact that provisions of Section 12 (3)(b) before the amendment are mandatory. It was, therefore, incumbent upon the tenant to pay rent regularly during the pendency of the appeal. Of course, regularity does not mean clockwork precision or exactitude. There were three defaults which are highlighted by the appellate court in paras 10 and 11 of the impugned judgment. The rent remained in arrears for more than 2 to 3 months on three different occasions. No orders of court were sought. No application was submitted showing delay in payment of rent on three occasions. Therefore, merely because some times, advance rent is paid, that itself would not come to the rescue of the tenant to saving from rigours of provisions of Section 12 (3) (b). The tenant who is complying with conditions of Section 12 (3)(b) is only entitled to protection thereof. In the present case, the tenant is proved to have committed three defaults and the rent remained in arrears for more than 2 to 3 months during the default on three occasions. Therefore, according to the settled proposition in law, the tenant cannot be held to be ready and willing to pay rent and entitled to protection of provisions of Section 12 (3) (b) as it then stood. Therefore, the contention raised on behalf of the tenant must fail.

There is no dispute about the fact that amended

provisions of Section 12 (3) (b) as amended by Gujarat Act 7 of 1985 deleting the word 'regularly' are held to be applicable prospectively and not retrospectively in view of the Division Bench decision of this court rendered in Sakarbaki Devraj vs. Ibrahim , 1994 (2) GLR 1091 . Therefore, the amended provisions of Section 12 (3)(b) deleting the word 'regularly' will not be applicable to the present case. The case is, therefore, governed by provisions of Section 12 (3)(b) as it then stood before the amendment where the word 'regularly' was very much in the Section.

The second contention raised by Miss Shah is with regard to fixation of standard rent. Contractual rent of Rs. 75/- per month which came to be fixed as standard rent by the trial court and confirmed by the appellate court is challenged in this revision. The finding of fact recorded by the trial court and appellate court on the issue of standard rent is quite justified. Nothing has been successfully shown which would warrant interference of this court in revision under Section 29(2) of the Bombay Rent Act wherein the scope is circumscribed.

Miss Shah has contended that the appellate court has not properly appreciated the evidence. This submission is not sustainable. Both the courts have considered the evidence on record correctly. Reliance was placed that one tenant Hasan was paying rent at Rs. 45/- per month and he is in new premises is rightly not accepted by the courts below as not a comparable unit. So is the case in case of two other such instances relied on by the tenant. As such, the tenant has to show that the agreed rent is excessive or exorbitant. The tenant has failed to prove it. Both the courts have concurrently and consistently observed that standard rent of the premises is Rs. 75/per month and this finding of fact has remained unassailable. Therefore, the last contention raised by Miss Shah is also required to be rejected. Accordingly, it is rejected.

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Insofar as provisions of Section 12(3)(b) are concerned, it may be noted that the said provisions will apply to the following cases-

- (i) where arrears of rent was for less than six months , or
- (ii) where entire rent is not payable monthly;

(iii) where the dispute about standard rent and/or permitted increases has been raised within a period of one month after receipt of notice under Section 12(3).

Both the courts have rightly found that the present case is governed by provisions of Section 12 (3)(b). A tenant who seeks protection of provisions of Section 12 (3)(b) before amendment which came into force in 1985 is obliged to satisfy the following conditions:

(i) on the first day of hearing of the suit for arrears on the ground of nonpayment of rent or on any other day as the court may direct upon request of the party, the tenant paid the entire arrears of rent and permitted increases then due to the landlord.

(ii) tenant must continue to pay regularly during the pendency of the suit such rent and permitted increases periodically as the court may specify and the pendency of the appeal is in continuation of the suit'

The aforesaid conditions must be satisfied and they must co-exist for seeking protection against eviction on the ground of non-payment of rent under Section 12 (3)(b).

The tenant seeking protection under these provisions has to be vigilant and has to take steps to comply with the aforesaid conditions.

The Honourable Apex court in Ganpat vs Sashikant, AIR 1978 s.c 955 has clearly held that in order to seek protection of provisions of Section 12 (3)(b) , the tenant must comply with the conditions laid down in the said provisions. The court cannot exercise discretion in favour of the tenant who has not fulfilled the conditions. If there is statutory default or neglect on the part of the tenant, whatever may be the cause, the landlord acquires a right under Section 12 (3)(b) for getting decree for possession. A tenant who is a defaulter and who failed to comply with the conditions set out in Section 12 (3)(b) cannot be given protection and he cannot be allowed to defeat the landlord's claim for eviction. It is unequivocally held by the Honourable Supreme court in the aforesaid decision that Section 12 (3)(b) does not create any discretionary jurisdiction in the court.

In Mranalini B. Shah vs B.M.Shah, AIR 1980, S.C. 954 the

Honourable Apex court has also expounded the relevant position of law emerging from the provisions of Section 12 (3)(b). It is clearly found in the said decision that payment of rent and permitted increases must be paid regularly during the pendency of the suit. The term 'regularly' is held to be mandatory and not directory. In case of monthly tenancy, the court has no discretion to treat payment made at irregular intervals as sufficient compliance. It is observed that if the tenant persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months- as is the case in the present case, the court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of provisions of Section 12 (3)(b) . Thus, the proposition of law enunciated by the Honourable Supreme court in Ganpat Ladha (supra) has been approved and followed in Mranalini's case .

After having examined the relevant legal settings and considering the same in the backdrop of the facts, this court has no hesitation in finding that the present petition is meritless and the impugned judgment and decree are required to be confirmed and affirmed. Accordingly, this petition is dismissed with costs. Rule is discharged.

At this stage, Miss Shah for the petitioner submits that the petitioner may be protected atleast for a period of two years in view of paucity of housing accommodation in a place like Surat. Having regard to the facts and circumstances, the petitioner-tenant is protected till the end of December 1997 on the following conditions:

- (i) The tenant shall pay all arrears on or before 31st March 1997 alongwith costs before the trial court;
- (ii) The petitioner-tenant shall file an undertaking before this court which shall incorporate usual terms and shall also include a term that he is in physical possession of the demise premises and that he shall hand over peaceful vacant possession on or before 31.12.1997 and that he shall not part with, transfer, assign or deal with the rented premises in any manner whatsoever till actual physical possession of the demise premises is delivered to the landlord.

In case of failure of the aforesaid terms and conditions, the protection given to the petitioner-tenant and stay

of eviction decree till 31st December 1997 shall
automatically stand vacated.
